



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RTID 0648-XB095**

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Marine Corps Training Exercises at Cherry Point Range Complex, North Carolina**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of Renewal incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to the U.S. Marine Corps (USMC) to incidentally harass marine mammals incidental to training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina.

**DATES:** This Renewal IHA is valid from May 18, 2021, through May 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex](https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex). In case of problems accessing these documents, please call the contact listed above.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each

reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time, 1 year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the proposed IHA for the initial IHA, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:
  - (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
  - (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more

than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

[www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals). Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

### **History of Request**

On September 28, 2019, NMFS received a request from the USMC for an IHA to take marine mammals incidental to training exercises conducted at MCAS Cherry Point Range Complex in North Carolina. Following NMFS' review of the request, USMC submitted a revised application that was deemed adequate and complete on January 22, 2020. The USMC's request is for authorization of take of bottlenose dolphin (*Tursiops truncatus*) by Level A and Level B harassment. We published a notice of a proposed IHA and request for comments on March 16, 2020 (85 FR 14886) and subsequently published the final notice of our issuance of the IHA on May 26, 2020 (85 FR 31462), effective from May 18, 2020, through May 17, 2021. On August 3, 2020, NMFS received a request from USMC requesting a 7-year Letter of Authorization for take of bottlenose dolphin incidental to the same training operations at the MCAS Cherry Point Range Complex. NMFS determined that request to be adequate and complete on September 10,

2020, and published a notice of receipt of the request on October 6, 2020. As NMFS is unable to reach a decision regarding the requested Letter of Authorization prior to expiration of the current IHA, USMC requested a Renewal IHA.

On March 16, 2021, NMFS received an application for the Renewal of the initial IHA. As described in the request for the Renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. In order to consider an IHA Renewal, NMFS requires the applicant to provide a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. NMFS has reviewed USMC's preliminary monitoring report (available online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex](http://www.fisheries.noaa.gov/action/incidental-take-authorization-us-marine-corps-training-activities-cherry-point-range-complex)) and has determined that USMC's activities (including mitigation, monitoring, and reporting), estimated incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the initial IHA. This IHA Renewal is valid for a period of 1 year, from May 18, 2021, through May 17, 2022.

### **Description of the Specified Activities and Anticipated Impacts**

USMC plans to continue conducting training operations at the MCAS Cherry Point Range Complex. The training operations involve the use of live (explosive) and inert (non-explosive) ordnance and small boat maneuvers. These activities occur at the in-water bombing targets Brant Island (BT-9) and Rattan Bay (BT-11) located in Pamlico Sound, North Carolina.

The anticipated impacts are identical to those described in the initial IHA. NMFS anticipates the take of the same species of marine mammal (bottlenose dolphin) by Level

A and Level B harassment incidental to underwater noise resulting from explosive detonations associated with the training activities.

The following documents are referenced in this notice and include important supporting information:

- Initial final IHA (85 FR 31462; May 26, 2020);
- Initial proposed IHA (85 FR 14886; March 16, 2020); and
- 2020 IHA application, references cited, and previous public comments received (available at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities)).

A detailed description of the training activities for which authorization of take was requested may be found in the **Federal Register** notice of proposed IHA for the 2020 authorization (85 FR 14886; March 16, 2020). The location, timing (*e.g.*, seasonality), and nature of the training activities, including the types and amounts of munitions planned for use under this Renewal IHA, are identical to those analyzed in the initial IHA.

#### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take was requested, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice for the proposed IHA for the initial authorization (85 FR 14886; March 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, as well as USMC's preliminary monitoring report. NMFS has determined that there is no new information affecting which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take was requested may be found in the **Federal Register** notice for the proposed initial IHA (85 FR 14886; March 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, as well as USMC's preliminary monitoring report, and determined that there is no new information affecting our analysis of impacts on marine mammals and their habitat.

### *Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notice for the proposed and final initial IHAs (85 FR 14886; March 16, 2020 and 85 FR 31462; May 26, 2020). The information informing the take estimates remains applicable to this authorization, and is unchanged from the previously issued IHA. The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1. As before, no serious injury or mortality is anticipated to result from USMC's training activity. We assume for purposes of analysis here that all takes could accrue to any of the three potentially affected stocks of bottlenose dolphin (the only species for which take is expected).

**Table 1. Estimated Take Authorized**

Species	Level B Harassment	Level A Harassment
Bottlenose dolphin	102	2

### *Description of Mitigation, Monitoring and Reporting Measures*

The required mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 31462; May 26, 2020), and the discussion of the least practicable adverse impact included in that document remains

accurate. All mitigation, monitoring and reporting measures in the initial IHA are carried over to this Renewal IHA and summarized here:

#### Mitigation Requirements

*Visual Monitoring* – Range operators conduct or direct visual surveys to monitor the target areas for protected species before and after each exercise. Range operation and control personnel monitor the target area through two tower-mounted safety and surveillance cameras. In addition, when small boats are part of planned exercises and already on range, visual checks by boat crew will be performed.

The remotely operated range cameras (surveillance cameras) are high-resolution cameras that allow viewers to see animals at the surface and breaking the surface (though not underwater). The camera system has night vision (infrared) capabilities. Lenses on the camera system have a focal length of 40 mm to 2200 mm (56x), with view angles of 18 degrees 10' and 13 degrees 41' respectively. The field of view when zoomed in on the Rattan Bay targets will be 23 ft wide by 17 ft high, and on the mouth of Rattan Bay itself 87 ft wide by 66 ft high. Observers using the cameras are able to clearly identify ducks floating on waters near the target.

In the event that a marine mammal is sighted within 914 m (3,000 ft) of the BT-9 target area, personnel will declare the area as fouled and cease training exercises. Personnel will commence operations in BT-9 only after the animal has moved 914 m (3,000 ft) away from the target area.

For BT-11, in the event that a marine mammal is sighted anywhere within the confines of Rattan Bay, personnel will declare the water-based targets within Rattan Bay as fouled and cease training exercises. Personnel will commence operations in BT-11 only after the animal has moved out of Rattan Bay.

*Range Sweeps* – MCAS Cherry Point contracts range sweeps with commercial support aircraft prior to the commencement of range operations. The pilot and aircrew are

trained in spotting objects in the water. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of unauthorized vessels or persons and protected species. Range sweeps will not occur on weekend mornings.

The sweeps are flown at 100 to 300 ft (30-90 m) above the water surface, at airspeeds between 60 to 100 knots (69 to 115 miles per hour (mph)). The crew communicates directly with range personnel and can provide immediate notification to range operators of a fouled target area due to the presence of protected species.

*Aircraft Cold Pass* – Standard operating procedures for waterborne targets require the pilot to perform a visual check prior to ordnance delivery to ensure the target area is clear of unauthorized civilian boats and personnel, and protected species. This is referred to as a “cold” or clearing pass. Pilots requesting entry onto the BT-9 and BT-11 airspace must perform a low-altitude, cold first pass (a pass without any release of ordnance) immediately prior to ordnance delivery at the bombing targets both day and night.

Pilots will conduct the cold pass with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 61 to 914 m (200 to 3,000 ft) over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. If marine mammals are not present in the target area, the Range Controller may grant ordnance delivery as conditions warrant.

*Delay of Exercises* – The USMC will consider an active range as fouled and not available for use if a marine mammal is present within 914 m (3,000 ft) of the target area at BT-9 or anywhere within Rattan Bay (BT-11). Therefore, if USMC personnel observe a marine mammal within 914 m (3,000 ft) of the target at BT-9 or anywhere within Rattan Bay at BT-11 during the cold pass or from range camera detection, they will delay training until the marine mammal moves beyond and on a path away from 914 m (3,000

ft) from the BT-9 target or moved out of Rattan Bay at BT-11. This mitigation applies to air-to-surface and surface-to-surface exercises day or night.

Approximately 15 percent of training activities take place during nighttime hours. During these training events, monitoring procedures mirror day time operations as range operators first visually search the target area with the high-resolution camera. Pilots will then conduct a low-altitude first cold pass and utilize night vision capabilities to visually check the target area for any surfacing mammals.

*Vessel Operation* – All vessels used during training operations will abide by NMFS' Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals.

*Stranding Network Coordination* – The USMC will coordinate with the local NMFS Stranding Coordinator to discuss any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

#### Monitoring Requirements

*Protected Species Observer Training* – Operators of small boats, and other personnel monitoring for marine mammals from watercraft shall be required to take the U.S. Navy's Marine Species Awareness Training. Pilots conducting range sweeps shall be instructed on marine mammal observation techniques during routine Range Management Department briefings. This training would make personnel knowledgeable of marine mammals, protected species, and visual cues related to the presence of marine mammals and protected species.

*Pre- and Post-Exercise Monitoring* – The USMC will conduct pre-exercise monitoring the morning of an exercise and post-exercise monitoring the morning following an exercise, unless an exercise occurs on a Friday, in which case the post-exercise sweep would take place the following Monday. If the crew sights marine

mammals during a range sweep, they would collect sighting data and immediately provide the information to range personnel who would take appropriate management action. Range staff would relay the sighting information to training Commanders scheduled on the range after the observation. Range personnel will enter the data into the USMC sighting database. Sighting data includes the following (collected to the best of the observer's ability): (1) location (either an approximate location or latitude and longitude); (2) the platform that sighted the animal; (3) date and time and whether the sighting was during day or night; (4) how the animal was detected (*e.g.*, range cameras, acoustic monitoring, vessel, aircraft); (5) species; (6) number of animals; (7) the animals' direction of travel and/or behavior; and (8) weather.

#### Reporting Requirements

The USMC will submit a report to NMFS no later than 90 days following expiration of this IHA. This report must summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report will also address the effectiveness of the monitoring plan in detecting marine mammals.

#### Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to USMC was published in the **Federal Register** on April 22, 2021 (86 FR 21284). That notice either described, or referenced descriptions of, the applicant's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring, and reporting measures. NMFS did not receive any comments.

#### Determinations

The activities planned by USMC are identical to those analyzed in the initial IHA, as are the method of taking and the effects of the action. The potential effects of USMC's

activities are limited to Level A and Level B harassment in the form of auditory injury, temporary threshold shift, and behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that USMC's activities would have a negligible impact on the affected species or stocks. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) USMC's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (4) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, we must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with

respect to potential impacts on the human environment. In 2015, NMFS developed an Environmental Assessment (EA) evaluating the impacts of authorizing take of marine mammals incidental to the USMC's training activities at MCAS Cherry Point. Following review of this analysis, NMFS determined that the activity would not have a significant effect on the quality of the human environment and issued a Finding of No Significant Impact (FONSI).

NMFS has determined that there are no substantive changes to the evaluated action or new environmental impacts; and, therefore, the previous NEPA analysis remains valid. The 2015 EA and FONSI are posted online at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities).

### **Renewal**

NMFS has issued a Renewal IHA to USMC for the take of marine mammals incidental to training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina, for a period of 1 year.

Dated: May 14, 2021.

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Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.